

STATE OF MICHIGAN
COURT OF APPEALS

SCHLANN DILLARD and DARRYL
DILLARD,

Plaintiffs-Appellants,

v

ROYAL CAB COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 26, 1998

No. 198331
Wayne Circuit Court
LC No. 96-602915 NI

Before: Neff, P.J., and White and D. A. Teeple*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition and assessing costs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Schlann Dillard was injured when a cab she was riding in ran into another vehicle. Plaintiffs filed a first party no-fault action in Wayne Circuit Court against Royal Cab Company, located in Dearborn, Michigan. The case was assigned to Judge Richard C. Kaufman, and reassigned to Judge Sean F. Cox.

On January 24, 1996, plaintiffs filed the instant third party no-fault action in Wayne Circuit Court against Royal Cab Company, located in Southfield, Michigan. This Royal Cab Company was the assumed business name of Chai Eighteen, Inc, and had no connection to the accident. This action was assigned to Judge Michael J. Talbot. Judge Talbot granted defendant's motion for summary disposition, and awarded defendant attorney fees when plaintiffs required defendant to litigate its motion for summary disposition after it was clear that plaintiffs had named the wrong defendant.

Plaintiffs assert that this matter should have been assigned to Judge Cox, and that under MCR 8.111(D), Judge Talbot lacked jurisdiction to rule on defendant's motion. Subject matter jurisdiction is defined as a court's ability to exercise judicial power over a class of cases, not the

* Circuit judge, sitting on the Court of Appeals by assignment.

particular case before it. *Dep't of Treasury v Central Wayne Co Sanitation Authority*, 186 Mich App 58, 63; 463 NW2d 120 (1990). Circuit court jurisdiction over a particular matter is denied only by constitution or statute. *Id.* Contrary to plaintiffs' argument a court rule provision does not deprive a court of subject matter jurisdiction. Although this matter should have been transferred to Judge Cox pursuant to MCR 8.111(D), plaintiffs never made this request. Judge Talbot had jurisdiction to rule on defendant's motion.

The trial court did not abuse its discretion in granting costs against plaintiffs. Plaintiffs concede that defendant is the wrong party, and they do not contest the amount of the fees awarded. Where plaintiffs failed to dismiss this action after they were aware they sued the wrong party, the trial court could properly award attorney fees pursuant to MCR 2.114. The trial court did not clearly err in determining that plaintiffs' action was frivolous as to this defendant. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32-33; 561 NW2d 103 (1997).

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald A. Teeple